

REMARKS

A. 35 U.S.C. § 102

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1. Claim 1

In the Office Action of February 6, 2006, claim 1 was rejected under 35 U.S.C. § 102(b) as being anticipated by Burkhardt et al. Independent claim 1 states that several angular inclinations of a scanning device in relation to at least one scale are detected and a value for a chronological progression of a change in angular inclination of the scanning device is determined. As described in Applicant's Specification with respect to the embodiments of FIGS. 1-4, an example of angular inclination is the quantity W, the amount of tilting of the scanning device relative scale or measuring direction X. Burkhardt et al. does not disclose either 1) the recited detecting several angular inclinations or 2) determining the recited value for a chronological progression of a change in angular inclination of the scanning device. Accordingly, claim 1 is not anticipated by Burkhardt et al. and so the rejection should be withdrawn.

It is noted that the Office Action asserts at page 2 that Burkhardt et al. discloses “[d]etecting several angular positions of a scanning device” (emphasis added). However, claim 1 refers to detecting several angular inclinations of a scanning device and not several angular positions. The Office Action at page 8 further relies on the following passage as “suggesting an inclination (error) value”:

evaluating unit. The absolute position value of the second reference mark $R2_i$ is superimposed on the absolute position value of the first reference mark $R1_i$ with the correct algebraic sign (+ or -), along with the counting value of the counter. This counting value (Col. 3, ll. 19-23).

The above passage only regards a distance measurement between two positions along the scale. There is no mention of determining an inclination.

Page 8 of the Office Action also takes selected passages from Applicant's own Specification at page 5, lines 6, 7, 13 and 14 as suggesting that the term "inclination" suggests an error value. However, the passages refer to European Application 0 555 507 and not Applicant's invention. Looking at Applicant's description of the embodiment of FIGS. 1-3 of his invention, the angular position W obviously refers to a tilt/inclination of the scanning device 2 with respect to the linear measuring direction X or scale 1. This is consistent with the definition of inclination:

3 a : A deviation from the true vertical or horizontal: SLANT; also : the degree of such deviation . . . c (1): the angle determined by two lines or planes (2): the angle made by a line with the x-axis measured counterclockwise from the positive direction of that axis Webster's Ninth New Collegiate Dictionary, p. 609 (copy enclosed).

Since the meaning of the term "inclination" is clear and Burkhardt et al. does not disclose detecting several angular inclinations of a scanning device in relation to at least one scale as recited in claim 1. Accordingly, the rejection is improper and should be withdrawn.

The rejection is improper for the additional reason that Burkhardt et al. does not disclose , determining the recited value for a chronological progression of a change in angular inclination of the scanning device. Since it has been shown that Burkhardt et al. does not disclose detecting the recited angular inclinations, it follows that Burkhardt et al. does not disclose determining a chronological progression of a change in angular inclination. Accordingly, the rejection should be withdrawn.

Despite the impropriety of the present invention, claim 1 is being amended to further clarify the nature of the recited term "inclination." This is being done by clarifying that the angular inclination is in relation to a linear measuring direction of at least one linear scale. Since the passage at column 13, lines 19-23 relied on by the Office Action appears to regard the angular measuring device of FIG. 9 and so does not suggest using either a linear scale or a linear

measuring direction, the claims should be deemed patentable over Burkhardt et al.

2. Claims 16-19 and 23

Claims 16-19 and 23 were rejected under 35 U.S.C. § 102(b) as being anticipated by Burkhardt et al. Independent claim 16 states that the first module determines angular inclinations of a scanning device with respect to a measuring direction and the second module determines a value for a chronological progression of several angular inclinations. Burkhardt et al. does not disclose either 1) the recited first module that determines angular inclinations or 2) the recited second module that determines a value for a chronological progression of several angular inclinations for reasons similar to those given above in Section A.1. Accordingly, claim 16 and its dependent claims are not anticipated by Burkhardt et al. and so the rejection should be withdrawn.

Despite the impropriety of the present invention, claim 16 is being amended to further clarify the nature of the recited term “inclination.” This is being done by clarifying that the invention regards a linear position measuring system, the angular inclination is in relation to a linear measuring direction of at least one linear scale. Since the passage at column 13, lines 19-23 relied on by the Office Action appears to regard the angular measuring device of FIG. 9 and so does not suggest using either a linear scale or a linear measuring direction, the claims should be deemed patentable over Burkhardt et al.

B. 35 U.S.C. § 103

1. Burkhardt et al. and Hagl et al.

Claim 20 was rejected under 35 U.S.C. § 103 as being obvious in view of Burkhardt et al. and Hagl et al. Claim 20 depends indirectly on claim 16. As mentioned above in Section A.2, Burkhardt et al. does not disclose nor suggest either 1) the recited first module that determines angular inclinations or 2) the recited second module that determines a value for a chronological

progression of several angular inclinations. Hagl et al. does not cure the deficiencies of Burkhardt et al. since Hagl et al. does not suggest altering Burkhardt et al. to have 1) a first module that determines angular inclinations or 2) a second module that determines a value for a chronological progression of several angular inclinations. Furthermore, Hagl et al. does not disclose nor suggest altering Burkhardt et al. to use either a linear scale or a linear measuring direction. Without such suggestion, the rejection should be withdrawn.

It is noted that the Office Action has asserted that the patentability of claim 20 stands or falls with the patentability of claim 16 since the arguments are the same as given with respect to claim 16. This is not the case. The arguments are different. The argument regarding claim 16 regards anticipation while the argument regarding claim 20 regards obviousness for the combination of Burkhardt et al. and Hagl et al. Furthermore, it is not proper to make a rejection based on claims standing or falling together. Such a rejection is only proper in the context of an Appeal. Prior to an Appeal, the Examiner's job is to examine each claim separately and make an independent determination of patentability for each claim.

2. Burkhardt et al. and Schwaiger et al.

Claim 22 was rejected under 35 U.S.C. § 103 as being obvious in view of Burkhardt et al. and Schwaiger et al. Claim 22 depends indirectly on claim 16. As mentioned above in Section A.2, Burkhardt et al. does not disclose nor suggest either 1) the recited first module that determines angular inclinations or 2) the recited second module that determines a value for a chronological progression of several angular inclinations. Schwaiger et al. does not cure the deficiencies of Burkhardt et al. since Schwaiger et al. does not suggest altering Burkhardt et al. to have 1) a first module that determines angular inclinations or 2) a second module that determines a value for a chronological progression of several angular inclinations. Furthermore, Schwaiger et

al. does not disclose nor suggest altering Burkhardt et al. to use either a linear scale or a linear measuring direction. Without such suggestion, the rejection should be withdrawn.

It is noted that the Office Action has asserted that the patentability of claim 22 stands or falls with the patentability of claim 16 since the arguments are the same as given with respect to claim 16. This is not the case. The argument regarding claim 16 regards anticipation while the argument regarding claim 20 regards obviousness for the combination of Burkhardt et al. and Schwaiger et al. Furthermore, it is not proper to make a rejection based on claims standing or falling together.

C. Claims 2-15 and 21

Applicant notes with appreciation that claims 2-15 and 21 have been indicated to contain allowable subject matter.

CONCLUSION

In view of the arguments above, Applicant respectfully submits that all of the pending claims 1-23 are in condition for allowance and seek an early allowance thereof. If for any reason, the Examiner is unable to allow the application in the next Office Action and believes that an interview would be helpful to resolve any remaining issues, he is respectfully requested to contact the undersigned attorneys at (312) 321-4200.

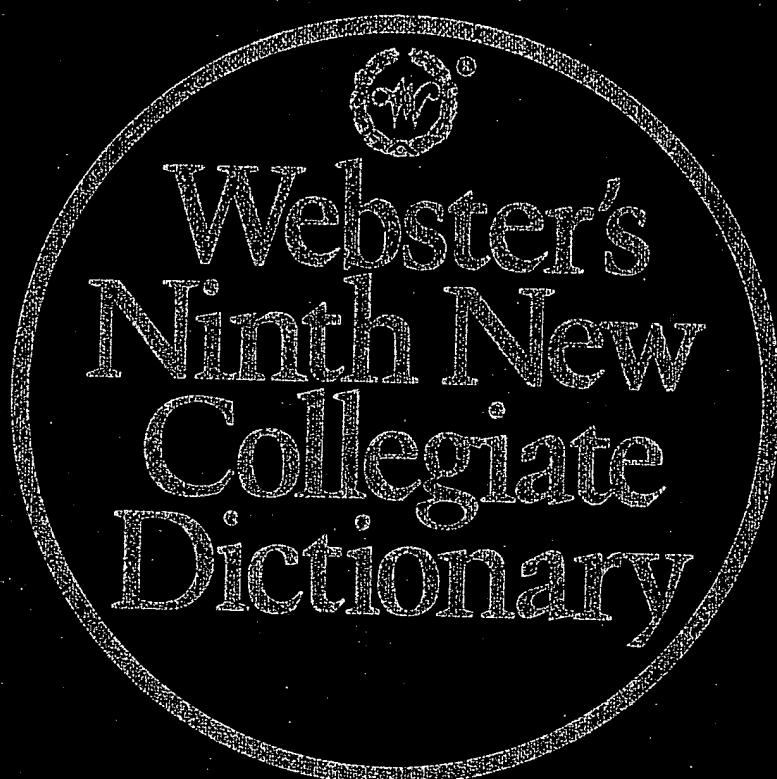
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a use of spells or verbal charms of magic; also : a written or recited a particular effect. — *in-ta-to-ry* *in-kan-tɔ̄-tɔ̄-ri*

fr. *in-* + *capable* capable) (1564) : in hold, or keep *archaic* of a kind to admit : *INSUSCIP-
TIVE* performance : *INCOMPET-
ENCY* (as by reason of mental incom-
petency) *in-kan-pa-bil-ot-ɛ̄* adj —
at-ed; —*tat-ing* (1657) 1 : to make
deprive of capacity or natural
in-pa-sa-ta-shən n — *in-cap-
acity*

n. pl. -ties [F *incapacité*] fr. *in-*
the quality or state of being inca-
pable power or of natural or legal

l. -at-ing [L *incarceratus*, pp. of
560] 1 : to put in prison 2 : to
nare to ordain as chief priest. — *in-
carnate* at CARDINAL (1897) : the top
man from another diocese

l. -at-ing [ME *incarnadīn*, fr. Oi-
d. fr. LL *incarnatus*] (1591) 1 : BLOODED

to make incarnadine : *REDEN-
TIAL* *incarnat*, fr. LL *incarnatus* —
caro flesh — more at *CAR-
BON* and esp. *human nature* and
visible : *EMBODIED* (as fiend ~)

4: —*nating* (1533) : to make in-
substance to b (1) : to give in
(2) : to constitute an embryo

very important human value

1 a (1) : the embodiment of
(2) *cap* : the union of divinely
concrete or actual form of a qual-
ity or typical character to a
2 : the act of incarnating

passed in a particular bodily
a first vice-president — *Waller*

: of caution : *HEEDLESSNESS*
: caution : *CARELESS* — *in-
cautious*

(1674) : incendiary action

a-rē n, pl. -ar-ies [L *incen-
dēre*] (15c) 1 a : a per-
or other property b : an
on who excites factions, quar-
rels

or involving a deliberate burn-
inflame : *INFLAMMATORY* (as
materials spontaneously b
of a missile containing chemi-
cals)

7. fr. LL *incēnum*, fr. L, neut.
c. fr. *in-* + *cedere* to burn
DID] (15c) 1 : material used
2 : the perfume exhaled
broadly : a pleasing scent 3

RAGRANCE
to apply or offer incense to

ring [ME *encens*, fr. MF to cause (a passion or em-
tive extreme anger or indigna-
tion)

titum, fr. neut. of *incentivus*
itus, pp. of *incinere* to set the
IANT] (15c) : something that
mination or action *syn* see OR-
GANS

itus, pp. of *capere* to take —
GEST — *in-cep-tor* (*-sep-tor*)

incep-tio, fr. *incep-tus*, pp. of
more at *HEAVE*] (15c) : an
MMENCEMENT *syn* see OR-
GANS

itive verb
: of or relating to a begin-
ning

MF, fr. LL *incertitudo*, fr.
CERTAINTY: a : absence of
quality or state of being un-

certainty

it, fr. LL *incest*, *incest* to delay — more at
out interruption : *UNCEAS-
ING*

incest *in-ses-t* n [ME, fr. L *incestum*, fr. neut. of *incestus* impure, fr.
l. *in-* *castus* pure — more at CASTE] (13c) : sexual intercourse between
persons so closely related that they are forbidden by law to marry; also
a statutory crime of such a relationship *syn* see ADULTERY

incestuous *in-ses(h)-cha-wəs* adj (1532) 1 : constituting or involv-
ing incest 2 : guilty of incest — *in-ces-tu-ous-ly* adv — *in-ces-tu-ous-
ness* n

inch *in-ch* n [ME, fr. OE *ynce*, fr. L *uncia* — more at OUNCE] (bef.
13c) 1 : a unit of length equal to $\frac{1}{3}$ yard — see WEIGHT table 2 : a
small amount, distance, or degree (as like cutting a dog's tail off by \sim es
Million Friedman) 3 pl. STATURE HEIGHT 4 a : a fall (as of rain or
snow) sufficient to cover a surface or to fill a gauge to the depth of one
inch b : a degree of atmospheric or other pressure sufficient to bal-
ance the weight of a column of liquid (as mercury) one inch high in a
barometer or manometer c : WATER-INCH — every inch : to the ut-
most degree (looks every inch a winner) — within an inch of : almost
to the point of

inch (1599) : to move by small degrees (the long line of people ~ing
up the stairs) ~ vt : to cause to move slowly (sooner or later they
~ing prices back up — *Forbes*)

inch (ME, fr. ScGael *innis*) chiefly *Scot* (15c) : ISLAND

inch *in-ch* adj (1605) : measuring a specified number of inches
inch *in-chor* comb form : one that has a dimension of a specified
number of inches

inch-meal *in-ch-mēl*, *-mēl* (a) *adv* [*inch* + *-meal* (as in piecemeal)]

(ca. 1530) : LITTLE BY LITTLE, GRADUALLY

inchoate *in-kō-ət*, *in-ka-wat* adj [L *inchoare*, pp. of *inchoare*, lit., to
fitch up, fr. *in-* + *colum* strap fastening + *plow* beam to the yoke; akin
to *colum* sieve — more at HEDGE] (1534) : being only partly in
existence or operation; esp. : imperfectly formed or formulated (misty, ~
suspicions that all is not well with the nation — J. M. Perry) — *in-cho-
ately* *adv* — *in-cho-ate-ness* n

inchoative *in-kō-ət-iv* adj (1631) 1 : INITIAL, FORMATIVE (the
stages) 2 : denoting the beginning of an action, state, or occurrence
— used of verbs — *inchoative* n — *in-cho-ative-ly* *adv*

incho-worm *in-ch-worm* n (1861) : LOOPER 1

incline *in-t* *sad-ənt*, *sad-ən* *s* *n* (1656) 1 a : an act or the
factor or manner of falling upon or affecting : OCCURRENCE b : rate of
occurrence or influence (a high ~ of crime) 2 a : the arrival of something
(as a projectile or a ray of light) on a surface b : ANGLE OF INCI-
DENCE

incident *in-t* *sad-ənt*, *sad-ən* *s* *n* [ME, fr. MF *incident*, fr.
incidentis, fr. L, pp. of *incidere* to fall into, fr. *in-* + *cadere* to fall —
more at CHANCE] (15c) 1 : something dependent on or subordinate to
something else of greater or principal importance 2 a : an occur-
rence of an action or situation that is a separate unit of experience
HAPPENING b : an accompanying minor occurrence or condition
CONCOMITANT 3 : an action likely to lead to grave consequences esp.
in diplomatic matters (as serious border ~) *syn* see OCCURRENCE

incident adj (15c) 1 : occurring or likely to occur esp. as a minor con-
sequence or accompaniment (the confusion ~ to moving day) 2 : de-
pendent on or relating to another thing in law 3 : falling or striking
on something (~ light rays)

incidental *in-t* *sad-ənt*, *sad-ən* *s* *adj* (1616) 1 : being likely to ensue as a
chance or minor consequence (social obligations ~ to his job) 2 : oc-
curring merely by chance or without intention or calculation

incidental n (1707) 1 pl. minor items (as of expense) that are not
particularized 2 : something that is incidental

inciden-tal *in-dēn-təl*, *in-dēn-tē* esp for 2. *dent-lē* *adv* (1665) 1 : by chance
2 : CASUALLY 2 : by way of interjection or digression : PARENTHE-
TICALLY

incidental music n (1864) : descriptive music played during a play to
project a mood (as for a battle, a storm, or a death scene) or to accom-
pany stage action

incinerate *in-sin-ə-rāt* *vt* -ated; -ating [ML *incineratus*, pp. of *incin-
erare*, fr. L *in-* + *ciner-*, *cineris* ashes; akin to Gk *konis* dust, ashes] (1555)
1 : to cause to burn to ashes — *in-cin-er-ation* *in-sin-ə-rā-shən* n
incinerator *in-sin-ə-rātər* n (1883) : one that incinerates; esp. : a
furnace or a container for incinerating waste materials

incip-ience *in-sip-ə-ən* *s* *n* (ca. 1864) : INCIPENCY

incipi-ency *in-on-sē* (1817) : the state or fact of being incipient : BE-
GGINING

incipi-ent *in-ənt* adj [L *incipient*, *incipiens*, pp. of *incipere* to begin —
more at INCEPTION] (1669) : beginning to come into being or to become
apparent : COMMENCING (an ~ of solar system) (evidence of ~ racial
tension) — *in-cip-i-ent-ly* *adv*

incipi-er *in-t* *sə-pət*, *in-ka-pit*; *in-sip-ət*, *-kip-* *s* *n* [L, it begins, fr.
incipere] (1897) : the first part : BEGINNING; specif. : the opening words
of text of a medieval manuscript or early printed book

incisal *in-si-zəl*, *-səl* *adj* (1903) : relating to, involving, or being the
cutting edge or surface of a tooth (as an incisor)

incise *in-siz*, *-siz* *vi* incised; *incis-ing* [MF or L, MF *inciser*, fr. L
incisus, pp. of *incidere*, fr. *in-* + *cadere* to cut — more at CONCISE]
(1567) 1 : to cut into 2 a : to carve figures, letters, or devices into

ENGRAVE b : to carve (as an inscription) into a surface

incised adj (15c) 1 : cut in : ENGRAVED; esp. : decorated with incised
figures 2 : having a margin that is deeply and sharply notched (an ~
leaf)

inci-sion *in-sizh-ən* *n* (15c) 1 a : a marginal notch (as in a leaf) b : CUT, GASH; specif. : a wound made esp. in surgery by incising the body

2 : an act of incising something 3 : the quality or state of being inci-
sive

incisive *in-si-siv* adj (1850) : impressively direct and decisive (as in
manner or presentation) (as writing) — *incisively* *adv* — *incisiv-
ness* n

incisor *in-si-zər* *n* (1666) : a tooth adapted for cutting; esp. : one of

the cutting teeth in mammals in front of the canines — see TOOTH illus-
tration

incita-tion *in-si-tā-shən*, *in-t* *sə-t* *n* (15c) 1 : an act of inciting

STIMULATION 2 : something that incites to action : INCITIVE

incite *in-sit* *vt* in-cited; in-cit-ing [MF *inciter*, fr. L *incitare*, fr. *in-* +

flare to put in motion — more at CITE] (15c) : to move to action : stir

up : spur on — in-cit-ant *in-sit* *n* — in-cite-ment *in-mənt* *n* — in-cit-er *n*

syn INCITE, INSTIGATE, ABET, FOMENT mean to spur to action. INCITE
stresses a stirring up and urging on, and may or may not imply initiating;
INSTIGATE definitely implies responsibility for initiating another's
action and often connotes underhandedness or evil intention; ABET
implies both assisting and encouraging; FOMENT implies persistence in
goading.

in-civ-il-i-ty *in-ni-sil-ə-tē* *n* [MF *incivilité*, fr. LL *incivilitat*, in-
civilitas, fr. *incivis*, fr. L *in-* + *civis* civil] (1584) 1 : the quality or
state of being uncivil 2 : a rude or discourteous act

in-clem-en-ty *in-klem-ən-si* *n* (1559) : the quality or state of being
clement

in-clem-ent *in-klem-ənt* adj [L *inclemens*, fr. *in-* + *clement*, *clemens* element] (1621) : lacking clemency: as : physi-
cally severe : STORMY (~ weather) b *archaic* : severe in temper or
action : UNMERCIFUL — in-clem-ent-ly *adv*

in-clin-able *in-kli-na-bil* adj (15c) : having a tendency or inclination;

also : disposed to favor or think well of

in-clin-a-tion *in-kli-nā-shən*, *in-ni-* *n* (14c) 1 a : obs. natural disposi-
tion : CHARACTER b : a particular disposition of mind or character

: PROPENSITY; esp. : LIKING (had little ~ for housekeeping) 2 : an act
or the action of bending or inclining: as a : BOW, NOB b : a tilting of
something

3 a : a deviation from the true vertical or horizontal : SLANT; also : the degree of such deviation b : an inclined surface

: SLOPE c (1) : the angle determined by two lines or planes (2) : the
angle made with a line with the x-axis measured counterclockwise from
the positive direction of that axis 4 : a tendency to a particular aspect,
state, character, or action (the clutch has an ~ to slip) — in-clin-a-tion-*al* *in-shən*, *-shən* *-l* *adj*

in-cline *in-klin* *vb* in-clined; in-clining [ME *inclinen*, fr. MF *inclinier*, fr. L *inclinare*, fr. in- + *clina* to lean — more at LEAN] vi (14c) 1 : to
bend the head or body forward : bow 2 : to lean, tend, or become
drawn toward an opinion or course of conduct 3 : to deviate from a
line, direction, or course; specif. : to deviate from the vertical or hori-
zontal ~ vt 1 : to cause to stoop or bow: BEND 2 : to have influence
on PERSUADE (his love of books *inclined* him toward a literary career)
3 : to give a bend or slant to — in-clin-er n

syn INCLINE, BIAS, DISPOSE, PREDISPOSE mean to influence one to have or
take an attitude toward something. INCLINE implies a tendency to
favor one of two or more actions or conclusions; BIAS suggests a set-
tled and predictable leaning in one direction and connotes unfair pre-
judice; DISPOSE suggests an affecting of one's mood or temper so as to
incline one toward something; PREDISPOSE implies the operation of a
disposing influence well in advance of the opportunity to manifest
itself.

incline *in-klin* *n* (1846) : an inclined plane: GRADÉ, SLOPE

in-clined *in-klind*, 2 also *in-* *ad* (14c) 1 : having inclination, dis-
position, or tendency 2 a : having a leaning or slope b : making an
angle with a line or plane

inclined plane *in-170* (1710) : a plane surface that makes an oblique angle
with the plane of the horizon

in-clin-ing *in-kli-niŋ* *n* (14c) 1 : INCLINATION 2 *archaic* : PARTY,
FOLLOWING

in-clin-o-met-er *in-kli-nā-mēt-ər*, *in-* *n* (1842) 1 : an apparatus for determining the direction of the earth's magnetic field with
reference to the plane of the horizon 2 : a machinist's clinometer 3 : an
instrument for indicating the inclination to the horizontal of an

axis of a ship or an airplane

in-clip *in-klip*, *vt*, *archaic* (1608) : CLASP, ENCLOSURE

inclose, *inclosure* var of *ENCLOSE*, ENCLOSURE

in-clude *in-klu*, *vt* in-cluded; in-cluding [ME *includen*, fr. L *in-
cludere*, fr. in- + *cludere* to close — more at CLOSE] (15c) 1 : to shut
up : ENCLOSE 2 : to take in or comprise as a part of a whole 3 : to
contain between or within (two sides and the *included angle*) — in-
clud-able or in-clud-ible *in-klu-də-bil* *adj*

syn INCLUDE, COMPREHEND, EMBRACE, INVOLVE mean to contain within
as part of the whole. INCLUDE suggests the containment of something
as a constituent, component, or subordinate part of a larger whole;
COMPREHEND implies that something comes within the scope of a state-
ment or definition; EMBRACE implies a gathering of separate items
within a whole, whether by being its natural or inevitable consequence.

in-clu-sion *in-kli-zhən* *n* [L *inclusio*, *inclusio*, fr. *inclusus*, pp. of
includere] (1600) 1 : the act of including : the state of being included
2 : something that is included: as a : a gaseous, liquid, or solid for-
ign body enclosed in a mass (as a mineral) b : a passive product of
cell activity (as a starch grain) within the protoplasm 3 : a relation
between two classes that exists when all members of the first are also
members of the second — compare MEMBERSHIP 3.

inclusion body *n* (ca. 1923) : a rounded or oval intracellular body that
consists of elementary bodies in a matrix, is characteristic of some virus
diseases, and is believed to represent a stage in the multiplication of the
virus

in-clu-sive *in-kliu-siv*, *-ziv* *adj* (1515) 1 : comprehending stated limits
or extremes (from Monday to Friday ~) 2 a : broad in orientation
or scope b : covering or intended to cover all items, costs, or services

— in-clu-sively *adv* — in-clu-siveness *n*

inclusive disjunction *n* (1942) : a complex sentence in logic that is true
when either or both of its constituent propositions are true — see
TRUTH TABLE table

inclusive of prep (1709) : including or taking into account (the cost of
building *inclusive* of materials)

in-co-erc-ible *in-kō-ər-sə-bil* *adj* (1710) : incapable of being con-
trolled, checked, or confined

in-cog-i-tant *in-kāj-ənt* *adj* [L *incogitans*, *incogitans*, fr. *in-* + *cog-
itans*, *cogitans*, pp. of *cogitare* to cogitate] (1628) : THOUGHTLESS, IN-
CONSIDERATE

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